

Judge Baker, cont.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

Judge Vaidik, cont.

alition Judge of the Year and the 1997 Indiana Judges Association Special Merit Award.

Judge Vaidik was appointed to the Court of Appeals in February 2000 by Governor Frank O'Bannon and was retained by election in 2002 and 2012. Because Judge Vaidik sees the Court of Appeals at the intersection of theoretical and practical law, she believes the Court should embody the highest degree of fairness and impartiality.

This view informs her passion for teaching, as she feels that Hoosiers, and all litigants, deserve the finest possible legal advocates on their behalf. Judge Vaidik also believes that legal writing must be distinguished by logical construction and clear, explanatory prose.

She is an adjunct professor at the Indiana University Maurer School of Law and won its 2011 Adjunct Professor of the Year Award. She has served as a visiting professor at the College of Law of England and Wales and taught as an adjunct professor at Valparaiso University Law School. She has taught at many law schools and for a number of organizations including the Indiana State Bar Association, the Indiana Legal Education Forum, and the Indiana Judicial Center.

Judge Vaidik has trained lawyers involved in prosecuting Rwandan war crimes, Mexican lawyers prosecuting drug lords, and solicitor advocates seeking the rights of audience in the High Courts in Belfast, Northern Ireland.

She is particularly proud of her long association with the National Institute of Trial Advocacy, which honored her with its 2007 Robert Keeton Faculty Award.

Despite her Court of Appeals caseload and her teaching, Judge Vaidik is also actively involved in a wide

variety of community, legal, and judicial organizations.

She served on the State of Indiana Children's Peak Performance Commission and has held many posts with the Indiana Judges Association and Indiana Judicial Center. She has been chairperson of the Judicial Education and Community Relations Committees of the Indiana Judicial Center and is a member of the American Bar Association, Indiana State Bar Association, and Sagamore Inns of Court.

She has received many other awards and honors including the 2004 Indiana State Bar Association's Women in Law Achievement Award, the 2007 Indiana Lawyer Distinguished Barrister Award, the 2003 Paragon of Justice Award from Valparaiso University Law School, and the Sagamore of the Wabash Award from two Indiana governors.

Judge Vaidik and her husband are the proud parents of twin daughters, one a medical doctor and one a lawyer, and they have two grandsons, who can choose either profession.

ATTORNEYS FOR THE PARTIES

For the Appellant

Scott King has extensive experience since 1976 in a wide array of criminal cases. He has served as a Deputy Prosecuting Attorney and Assistant United States Attorney and Public Defender handling investigations, trials, appeals, and post-conviction proceedings. He entered private practice in 1984 and continued until 1996 when he was elected Mayor of Gary, Indiana. After leaving office in 2006, he returned to the practice of law in northwest Indiana.

Mr. King is admitted to the State Bars of Indiana and Maryland; the Federal District Court Bars of Northern Indiana and Northern Illinois; the United States Circuit Court of Appeals for the Seventh Circuit and the United States Supreme Court. He is a member of the American Bar Association, Criminal Justice Section, and the National Association of Criminal Defense Attorneys.

Mr. King received his Bachelor of Arts from Concordia University in 1973, his Juris Doctorate from Valparaiso University School of Law 1976, and his Doctor of Laws from Concordia University (Honorary) in 1996.

He is the founder of Scott King Group, Merrillville.

For the Appellee

Larry D. Allen began working in the Office of the Indiana Attorney General in early 2012 as a law clerk and is currently a Deputy Attorney General in Criminal Appeals. Mr. Allen graduated from Olivet Nazarene University in 2004 with a major in political science. Before going to law school, he worked in the non-profit sector in the areas of international human rights and media. Mr. Allen earned his law degree from Indiana University McKinney School of Law in 2012. While in law school, he participated in the Staton Moot Court Competition, the Global Crisis Leadership Forum, and earned the Norman Lefstein Award of Excellence for his *pro bono* work with Indiana Legal Services' Senior Law Project. Mr. Allen is from Bloomington where he currently lives with his wife, Jennifer.

Appeals on Wheels

The Court of Appeals hears oral arguments across Indiana to enable Hoosiers to learn more about the judiciary's indispensable role in Indiana government.

Since its 2000-2001 centennial, the Court has held more than 390 "traveling oral arguments" at law schools, colleges, high schools and other venues.

Today's event is the Court's 18th traveling oral argument this year.

The opinion in today's case will be posted under "appellate opinions" on the court's website, www.courts.in.gov.



COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE ISBA SOLO & SMALL FIRM SECTION

Scott Wright v. State of Indiana

CRIMINAL LAW ISSUE:

- Whether the trial court erred when it removed a juror after deliberations began.

ORAL ARGUMENT:

Thursday, June 5, 2014
1:45 p.m.

APPEAL FROM:

Lake Superior Court
The Honorable
Salvador Vasquez, Judge

Synopsis: Case No. 45A05-1310-CR-526

Scott Wright was charged with child molesting as a Class A felony and his jury trial commenced in August 2013.

Eleven jurors voted to find Wright guilty. The 12th, Juror 356, voted not guilty and would not change his mind. About two hours after the jury began to deliberate the trial court received a note that said, "We are at a standstill. We are 11 out of 12 guilty. One is voting not guilty and is not willing to change his mind."

The court told the jurors to continue to deliberate and try to reach a verdict. About an hour later another note to the court said, "Still at a standstill. Nothing will change his mind."

The court called the jurors back into the courtroom and asked if there was anything it could do to assist

them or any questions it could answer. The jury indicated it had no questions but that the vote had not changed and "One juror feels like he is being bullied into changing his mind. He has suggested he will change his mind just to please us."

The court responded, "Your dinner is on the way. Please reread the instructions."

The next communication was that Juror 356 "will not talk [and] seems to be falling asleep at times. We cannot deliberate if he will not talk to us [and] he told us he does not want to talk."

The court noted the State had indicated it thought a male juror was starting to fall asleep during closing argument and the State was "thinking or inferring or speculating it might be the same juror."

The State confirmed it noticed the juror, Juror 356, might have been sleeping but it "couldn't be sure if he was closing his eyes to listen." It told the court "we need to switch [Juror 356] out with an alternate to make sure we have a juror who's heard all the evidence, who's heard all the deliberations and replace the juror who is refusing to deliberate."

The court declined to do so at that time, then called the jury foreperson into the courtroom. The foreperson said Juror 356 refused to deliberate: "He was talking at the beginning, but within probably the last hour has not said a single word to us. We cannot deliberate with him," and he "was dozing off."

Wright's counsel asked the foreper-

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Biographical notes about Court of Appeals judges

■ Six of the court’s first 19 judges served in the Civil War, all as Union soldiers or officers. Judge Posey Kime, born 1896, was the first to serve in WW1.

■ Nine Court of Appeals judges have later served the Indiana Supreme Court, including current Justice Robert D. Rucker.

■ Judge Frank M. Powers served just 33 days. The longest serving judge by far is Patrick D. Sullivan Jr., at more than 16,000 days. He retired in 2007 but still serves as a senior judge.

■ One of the five original members of the court, Jephtha New, died from a self-inflicted pistol shot in 1892. His term of office was completed by his son, Willard New.

■ Another father-son pair also served on the court: Ralph N. Smith and son Russell W. Smith. An uncle-nephew pair also served: Edgar D. Crumpacker and nephew Harry L. Crumpacker.

■ Memorably named judges include Henry Clay Fox, Daniel Webster Comstock, Cassius Clay Hadley and Ira Batman.

■ Judge John C. McNutt’s son, Paul McNutt, was Indiana governor from 1933-37 and appointed two judges to the Court of Appeals.

■ One foreign-born judge attained the court: George L. Reinhard was born in Bavaria in 1843, served in the Civil War, and wrote “The Common Sense Lawyer.”

■ Judge Thomas Faulconer made Indiana history when, as a Marion County judge, he opened his courtroom doors to TV and newspaper cameras for a celebrated murder trial in 1959.

■ Judge Joseph H. Shea resigned his Appeals Court seat in 1916 to become President Woodrow Wilson’s ambassador to Chile.

Indiana trial and appellate courts plan 2015 launch date for e-filing of court documents

The convenience and efficiency of electronic filing of court documents is on the horizon for Indiana’s trial and appellate courts. The Indiana Supreme Court is ending two centuries of paper filings with the decision to launch statewide e-filing.

“Nearly every aspect of our lives includes electronic documents – stores send receipts via email, banks allow check deposits through a smart phone. Now lawyers and litigants will be able to file court documents electronically. Using this technology, our courts will be more efficient and better able to administer justice without delay,” Chief Justice Brent Dickson explained.

Currently, paper documents are filed with trial court clerks across the state. Appellate documents are not only filed on paper, but are also maintained on a 28-year-old computer system. The Court’s decision to begin statewide e-filing also includes moving the appellate courts onto the Odyssey case management system (which is already used in courts in 48 counties).

The statewide e-filing system is expected to begin in phases starting in 2015. Indiana citizens and their attorneys will benefit from the convenience and cost savings of e-filing because work can be conducted over the Internet on a 24/7 basis. Free-

market competition is expected to keep associated fees low.

The first step is for the Division of State Court Administration to seek competitive bids for an e-filing manager. That manager will be required to work with multiple e-filing service providers statewide. The Division will coordinate the process, including provider certification. By having multiple providers, litigants will have filing choices.

In 2006, the Court created Administrative Rule 16 to test e-filing. Three projects were approved for e-filing on a limited basis. “The Court is appreciative of the groundwork completed by the pilot counties,” explained Justice Mark Massa, who chairs technology projects for the courts. “The initial work demonstrates that e-filing is beneficial to litigants, lawyers, judges, clerks and their staffs.”

In anticipation of a statewide e-filing system, a committee of lawyers, judges, circuit court clerks and court staff drafted a proposed trial rule for the e-filing project. The Supreme Court’s Committee on Rules of Practice and Procedure is already seeking comments on the proposed e-filing rule.

For more information on submitting a comment, please visit <http://courts.in.gov/4210.htm>

Synopsis, cont.

son: “He just wouldn’t change his mind after people were trying to sway him?” and the foreperson responded, “Correct, and he did make probably three or four comments that he will make up his mind just so he could go home.”

Another juror told the court “He’s just quiet and dozing off, making small talk about other things other than what we need to be speaking about.”

The court then said ,“if it were just an issue of someone who disagrees with the other jurors, we of course – we wouldn’t replace that person,” but Juror 356 “has stopped deliberating. It’s one thing to stick to your guns, it’s another to refuse to participate in the cooperative effort of deliberation.”

It questioned the other jurors indi-

vidually about Juror 356. Most indicated he had dozed off at some points and was no longer deliberating, but some testified he had earlier explained his position, he fully understood what was going on, and “did speak his mind and say why he was voting the way he was.”

The judge granted the State’s motion, finding Juror 356 was “refus-[ing] to participate in the cooperative effort of deliberation.” Wright was then found guilty.

Wright argues on appeal the removal of the holdout juror deprived him of his constitutional right to a unanimous verdict.

The State argues removal was not an abuse of discretion, as Juror 356 refused to deliberate, causing a “breakdown in the integrity of the deliberative process.”

Today’s Panel of Judges

The Honorable John G. Baker (Monroe County)

John G. Baker was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court’s First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University -Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana’s judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker’s many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout as a youth).

In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board’s Academic Affairs committee.

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The Honorable Nancy H. Vaidik (Porter County)

Nancy H. Vaidik is a judge and a teacher with broad experience in both trial and appellate courts and in legal classrooms. She has an expertise in trial advocacy and appellate advocacy, with a strong background in the rules of evidence and legal mediation.

Judge Vaidik was selected by her colleagues as **chief judge** of the Court of Appeals for a three-year term beginning Jan. 1, 2014.

Judge Vaidik grew up in Portage, Indiana, and is a sixth-generation Hoosier who retains strong ties to her home town. She graduated with high distinction from Valparaiso University in 1977, with a double major in political science and psychology, and then studied at Valparaiso University Law School, where she earned her Juris Doctor in 1980.

Her early years as deputy and then chief deputy Porter County prosecutor provided the grounding for her judicial career. As an attorney, she tried over seventy-five jury trials and founded the Porter County Victims Assistance Unit, the Porter County Sexual Assault Recovery Project, the Domestic Violence Service, and the Valparaiso University Law School Mediation Clinic. She also served on the Porter County Community Corrections Board and led a countywide task force that spearheaded the eventual construction of a new county jail. After serving as a prosecutor, she went into private practice and specialized in domestic relations, probate, municipal law, and general litigation. She represented Caring Place, Inc., a shelter for battered women in Valparaiso.

From 1992 to 2000, she served as the judge of the Porter Superior Court. During her tenure on the trial court, Judge Vaidik was awarded a wide range of honors including the 1996 Indiana Domestic Violence Co-

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The Honorable Melissa S. May (Vanderburgh County)

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. Prior to this year, she served as Presiding Judge of the Fourth District, which covers all of Indiana.

Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission (for the public good), Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.”

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.